

§ 1.411(d)-6

26 CFR Ch. I (4-1-03 Edition)

the 1986 Act for a special effective date rule applicable to certain plans maintained pursuant to collective bargaining agreements.

(2)(i) This subparagraph (2) provides a special rule for class year plans that were in compliance with section 411(d)(4) immediately before the first plan year beginning after section 411(d)(4) is repealed. These plans are not required to retroactively compute years of service under the general section 411(a)(2) rules. Instead, a participant must receive a year of service for each such prior plan year if the employee was performing services on the last day of such year. Similarly, if the participant was not performing services on the last day of such years, the participant will be treated as if a one-year break-in-service occurred for such plan year. This subdivision (i) applies to plan years to which this section applies.

(ii) In the case of a plan year to which § 1.411(d)-3 applied, a class year plan must compute years of service and breaks in service in a manner consistent with the rules in this paragraph (b)(2)(i), giving appropriate regard to the statutory changes made to section 411(d)(4).

[T.D. 8219, 53 FR 31854, Aug. 22, 1988; 53 FR 48534, Dec. 1, 1988]

§ 1.411(d)-6 Section 204(h) notice.

Q-1: What are the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) (29 U.S.C. 1054(h))?

A-1: (a) *Requirements of section 204(h).* Section 204(h) of ERISA ("section 204(h)") generally requires written notice of an amendment to certain plans that provides for a significant reduction in the rate of future benefit accrual. Section 204(h) generally requires the notice to be provided to plan participants, alternate payees, and employee organizations. The plan administrator must provide the notice after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment.

(b) *Other notice requirements.* Other provisions of law may require that certain parties be notified of a plan amendment. See, for example, sections

102 and 104 of ERISA, and the regulations thereunder, for requirements relating to summary plan descriptions and summaries of material modifications.

Q-2: To which plans does section 204(h) apply?

A-2: Section 204(h) applies to defined benefit plans that are subject to part 2 of subtitle B of title I of ERISA and to individual account plans that are subject to both such part 2 and the funding standards of section 302 of ERISA. Accordingly, individual account plans that are not subject to the funding standards of section 302, such as profit-sharing and stock bonus plans, are not subject to section 204(h).

Q-3: What is "section 204(h) notice"?

A-3: "Section 204(h) notice" is notice that complies with section 204(h) and the rules in this section.

Q-4: For which amendments is section 204(h) notice required?

A-4: (a) *In general.* Section 204(h) notice is required for an amendment to a plan described in Q&A-2 of this section that provides for a significant reduction in the rate of future benefit accrual.

(b) *Delegation of authority to Commissioner.* The Commissioner of Internal Revenue may provide through publication in the Internal Revenue Bulletin of revenue rulings, notices, or other documents (see § 601.601(d)(2) of this chapter) that section 204(h) notice need not be provided for plan amendments otherwise described in paragraph (a) of this Q&A-4 that the Commissioner determines to be necessary or appropriate, as a result of changes in the law, to maintain compliance with the requirements of the Internal Revenue Code of 1986, as amended (Code) (including requirements for tax qualification), ERISA, or other applicable federal law.

Q-5: What is an amendment that affects the rate of future benefit accrual for purposes of section 204(h)?

A-5: (a) *In general—(1) Defined benefit plans.* For purposes of section 204(h), an amendment to a defined benefit plan affects the rate of future benefit accrual only if it is reasonably expected

to change the amount of the future annual benefit commencing at normal retirement age. For this purpose, the annual benefit commencing at normal retirement age is the benefit payable in the form in which the terms of the plan express the accrued benefit (or, in the case of a plan in which the accrued benefit is not expressed in the form of an annual benefit commencing at normal retirement age, the benefit payable in the form of a single life annuity commencing at normal retirement age that is the actuarial equivalent of the accrued benefit expressed under the terms of the plan, as determined in accordance with the principles of section 411(c)(3) of the Code).

(2) *Individual account plans.* For purposes of section 204(h), an amendment to an individual account plan affects the rate of future benefit accrual only if it is reasonably expected to change the amounts allocated in the future to participants' accounts. Changes in the investments or investment options under an individual account plan are not taken into account for this purpose.

(b) *Determination of rate of future benefit accrual.* In accordance with paragraph (a) of this Q&A-5, the rate of future benefit accrual is determined without regard to optional forms of benefit (other than the annual benefit described in paragraph (a) of this Q&A-5), early retirement benefits, or retirement-type subsidies, within the meaning of such terms as used in section 411(d)(6) of the Code (section 204(g) of ERISA). The rate of future benefit accrual is also determined without regard to ancillary benefits and other rights or features as defined in § 1.401(a)(4)-4(e).

(c) *Examples.* These examples illustrate the rules in this Q&A-5:

Example 1. A plan is amended with respect to future benefit accruals to eliminate a right to commencement of a benefit prior to normal retirement age. Because the amendment does not change the annual benefit commencing at normal retirement age, it does not reduce the rate of future benefit accrual for purposes of section 204(h).

Example 2. A plan is amended to modify the actuarial factors used in converting an annuity form of distribution to a single sum form of distribution. The use of these modified assumptions results in a lower single sum. Be-

cause the amendment does not affect the annual benefit commencing at normal retirement age, it does not change the rate of future benefit accrual for purposes of section 204(h).

Q-6: What plan provisions are taken into account in determining whether there has been a reduction in the rate of future benefit accrual?

A-6: (a) *Plan provisions taken into account.* All plan provisions that may affect the rate of future benefit accrual of participants or alternate payees must be taken into account in determining whether an amendment provides for a significant reduction in the rate of future benefit accrual. Such provisions include, for example, the dollar amount or percentage of compensation on which benefit accruals are based; in the case of a plan using permitted disparity under section 401(l) of the Code, the amount of disparity between the excess benefit percentage or excess contribution percentage and the base benefit percentage or base contribution percentage (all as defined in section 401(l)); the definition of service or compensation taken into account in determining an employee's benefit accrual; the method of determining average compensation for calculating benefit accruals; the definition of normal retirement age in a defined benefit plan; the exclusion of current participants from future participation; benefit offset provisions; minimum benefit provisions; the formula for determining the amount of contributions and forfeitures allocated to participants' accounts in an individual account plan; and the actuarial assumptions used to determine contributions under a target benefit plan (as defined in § 1.401(a)(4)-8(b)(3)(i)).

(b) *Plan provisions not taken into account.* Plan provisions that do not affect the rate of future benefit accrual of participants or alternate payees are not taken into account in determining whether there has been a reduction in the rate of future benefit accrual. For example, provisions such as vesting schedules or optional forms of benefit (other than the annual benefit described in Q&A-5(a) of this section) are not taken into account.

(c) *Examples.* The following example illustrates the rules in this Q&A-6: